

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

MM STEEL, LP,

Plaintiff,

V.

RELIANCE STEEL & ALUMINUM CO.,  
CHAPEL STEEL CORP., AMERICAN  
ALLOY STEEL, INC., ARTHUR J. MOORE,  
JSW STEEL (USA) INC., & NUCOR CORP.

Defendants.

CASE NO. 4:12-CV-01227

**MOTION OF DEFENDANTS ARTHUR J. MOORE AND  
AMERICAN ALLOY STEEL, INC. TO PRECLUDE DR. STEPHEN MAGEE FROM  
TESTIFYING ABOUT A LACK OF EXPERT TESTIMONY REGARDING AMERICAN  
ALLOY'S REASONS FOR NOT DOING BUSINESS WITH PLAINTIFF**

Defendants Arthur J. Moore and American Alloy Steel, Inc. move to preclude Plaintiff's proposed expert Dr. Stephen P. Magee from testifying that Defendants' experts do not assert any procompetitive justification or economic defense for Moore and American Alloy's refusal to do business with Plaintiff MM Steel, L.P. Dr. Magee has stated that "none of Defendants' experts suggest that there is any procompetitive justification for the actions of" Moore and American Alloy and that "Defendants experts do not even assert an economic defense for their anticompetitive actions in this case." Supp. Rpt. ¶ 52. That commentary is inadmissible. Fed. R. of Evid. 702; *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579 (1993); *see also* Fed. R. of Evid. 403.

“An expert may not go so far as to usurp the exclusive function of the jury to weigh the evidence and determine credibility.” *Westcott v. Crinklaw*, 68 F.3d 1073, 1076 (8th Cir. 1995) (internal quotations and alterations omitted). Such an expert opinion would be inadmissible even

if the credibility arguments offered were somehow allegedly rooted in the witness's expertise, *see Nimely v. City of New York*, 414 F.3d 381, 398-399 (2d Cir. 2005)—which Dr. Magee's statements are not. Such testimony must be excluded, because it “does not require special expertise and is merely a commentary on the . . . evidence in this case. It is the jury's role to assess the evidence and to determine the contested issues of fact.” *Floyd v. Hefner*, 556 F.Supp.2d 617, 644 (S.D. Tex. 2008); *see In re Air Crash Disaster at New Orleans, Louisiana on July 9, 1982*, 795 F.2d 1230, 1233 (5th Cir. 1986) (“Stated more directly, the trial judge ought to insist that a proffered expert bring to the jury more than the lawyers can offer in argument.”).

For these reasons, the Court should exclude Dr. Stephen Magee from testifying about any lack of testimony by Defendants' experts regarding any procompetitive justification or economic defense for Moore and American Alloy's refusal to do business with plaintiff MM Steel.

Respectfully submitted,

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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on March 6, 2014, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to all registered counsel of record.

/s/ Geraldine W. Young  
Geraldine W. Young

